



LAND USE COMMISSION
STATE OF HAWAII

2015 SEP -4 P 1: 06

August 31, 2015

State of Hawaii Land Use Commission
Department of Business and Economic Development and Tourism
P.O. Box 2359
Honolulu, Hawaii 96804-2359
Attention: Daniel E. Orodener, Executive Officer
By Federal Express and e-mail

Re: 2014 Annual Report to the Land Use Commission
Docket No. A89-649 (Manele Golf Course)
Lana'i Resorts, LLC (dba Pulama Lana'i)

To Chairperson and Members of the Land Use Commission:

As required by Condition No. 21 of the Finding of Fact, Conclusion of Law, and Decision and Order, dated April 16, 1991 (D&O), in the above described docket, Lanai Resorts, LLC (dba Pulama Lana'i) hereby submits this annual report to the Land Use Commission (Commission) "in connection with the status of the project and the Petitioner's progress in complying with the conditions imposed." Pulama Lana'i submits this report as the successor entity to Castle & Cooke Resorts, LLC (collectively Petitioner).

GENERAL PROGRESS OF THE PROJECT

The "*Property*", as defined in the D&O, includes certain land at Manele, Lanai, Hawaii, Tax Map Key No.(2) 4-9-0 01: portion of 1, covering an aggregate area of approximately 138.577 acres. Petitioner has completed an 18-hole Golf Course, of which most of the holes and related uses are located on the Property, with a few holes located on the adjoining land within the existing urban Manele Project District. The Challenge at Manele Golf Course (Golf Course) has been open for play since December 22, 1993 and the Challenge at Manele clubhouse has been open for operation and use since July, 1994.

as well as DLNR and Hawaiian Homes Commission approvals. The transfer of the lands and subsequent subdivision has not been completed by DHHL.

CONDITION 2

"Petitioner shall make available 100 acres of land, with an adequate supply of water, to the State Department of Agriculture and or the County of Maui, for their establishment and operation of an agricultural park for Lanai residents, at nominal rents for a 55-year term, at site(s) agreeable to the State Department of Agriculture and the County of Maui."

Compliance: Petitioner has complied with this Condition 2. In that certain Indenture of Lease dated July 15, 1994 and filed in the Land Court as Document No. 2165943, Dole leased to the DLNR 100 acres of real property for 55 years at a nominal lease rate of \$100 per year for use as the Lana'i Agricultural Park for purposes of discharging Petitioner's obligations under Condition 2. This lease was amended by an Amendment of Lease dated August 19, 1994 and filed as Land Court Document No. 2199103. With respect to an "adequate water supply", the lease states that the State "shall have the right to purchase from the public utility and to use up to, but not more than 0.20 MGD on the average annual basis." The Amendment of lease states that, notwithstanding this quoted sentence of the Lease, "...the parties further agree that additional water will be allocated to the agricultural park in the future, but that the need for such additional water will be the [State's] responsibility to justify and that any costs incurred for this additional water will be borne by the [State]."

CONDITION 3

"Petitioner shall make the golf course on the Property available to Hawaii residents at percentage discounts comparable to percentage discounts available at other private courses open to the general public in the State as reviewed and approved by the Office of State Planning."

Compliance: Petitioner has complied with this Condition 3 and a similar condition incorporated in County of Maui Ordinance 2133 relating to zoning of the property. Petitioner makes the Golf Course available for play to Lanai residents at a rate of 50% or less of the standard rate and to State of Hawaii residents at 60% of the standard rate. Petitioner will continue to adhere to this schedule of rates and, by virtue of County Ordinance 2133, will be bound to maintain this schedule of rates. The Office of Planning approved this rate structure in a letter dated December 17, 1996.

CONDITION 5a

"In developing and operating the golf course and any future residential development in the Manele project district, petitioner shall protect public access along the accessible cliff coastline."

"a. Petitioner shall dedicate a public easement along the accessible cliff coastline from Hulopo'e Bay to the intersection of the coastline with the westernmost boundary of the project area, which will allow public pedestrian access in perpetuity without obstruction or interference with such use, subject to reasonable rules and regulations for public safety, provided that access shall be maintained."

Compliance: Petitioner has complied with this condition. In a Memorandum of Agreement dated October 19, 1994 and filed in the Land Court as Document No. 2200658, Petitioner and DLNR (Division of Forestry and Wildlife, Na Ala Hele Trails and Access Program) agreed to a public access trail along the shoreline lands between Hulopo'e and Huawai Bay, Lana'i, Hawai'i. Pursuant to Condition 5 of the Decision and Order and the Memorandum of Agreement, Petitioner executed a Grant of Easement dated March 9, 1995 and filed in the Land Court as Document No. 2236005, covering Petitioner's dedication of a public easement from Hulopo'e Bay to the intersection of the coastline with the westernmost boundary of the project area, as prescribed by Condition 5. Further pursuant to the Memorandum of Agreement, Petitioner continues to be responsible for cleaning and performing periodic maintenance of the trail.

CONDITIONS 5b, c, d

"b. Petitioner shall cause to be established a setback zone of 50 feet from the edge of the cliff along the accessible cliff coastline from Hulopo'e Bay to the intersection of the coastline with the westernmost boundary of the project area within which there shall be no improvements of any kind, other than improvements which may be reasonably necessary for purposes of public safety, and where the property will be left in its natural state; provided that the setback for the proposed 16th hole may have a setback of less than 50 feet subject to mutual agreement between the petitioner and LSG."

"c. Petitioner shall cause the area within 75 feet of the edge of the cliff along the accessible cliff coastline from Hulopo'e Bay to the intersection of the coastline with the westernmost boundary of the property area to remain in its natural state without improvements, except with respect to the three proposed signature holes of the golf course."

"d. Petitioner shall prohibit any vertical improvements, other than landscaping and improvements allowed by county variances, to be constructed or erected within 150 feet of the edge of the cliff along the accessible cliff coastline from Hulopoe Bay to the intersection of the coastline with the westernmost boundary of the project area."

Petitioner has also adopted the United States Golf Association Rules (USGA) for the Golf Course. Section 1 of the USGA Rules requires golfers to take care with respect to all persons on or near the course and provides, in pertinent part:

"Safety

Prior to playing a *stroke* or making a practice swing, the player should ensure that no one is standing close by or in a position to be hit by the club, the ball or any stones, pebbles, twigs or the like that may be moved by the *stroke* or swing."

The Golf Course's score card specifically states that "USGA Rules govern all play" and, in addition, states:

"Please exercise care and enjoy the course safely and responsibly. The course contains archaeological sites that should not be disturbed. Please join with all of us on Lana'i respecting Lanai's natural environment and its cultural and historical treasures."

CONDITION 5g

"g. Petitioner shall provide Lanaians for Sensible Growth with plans for the golf course layout, location of holes, access pathways, and signage in advance of any final approval of such plans by the appropriate governmental agencies."

Compliance: Petitioner has complied with this condition. Petitioner submitted its plans for Golf Course layout to LSG prior to the County of Maui's approval of the same, as evidenced by a transmittal memorandum from Petitioner to LSG, dated October 12, 1992. The County of Maui approved these plans in January 1993 and Petitioner submitted the approved plans to LSG via transmittal memorandum, dated February 2, 1993.

CONDITION 5h

"h. Petitioner shall record with the appropriate governmental agency all necessary and appropriate instruments to accomplish the purposes of this paragraph."

Compliance: As noted above, Petitioner has complied with this condition by executing and filing a Grant of Easement dated March 9, 1995 and filed in the Land Court as Document No. 2236005 covering Petitioner's dedication of a public easement from Hulopo'e Bay to the intersection of the coastline with the westernmost boundary of the project area; and by Memorandum of Agreement dated October 19, 1994, by and between Petitioner and DLNR and filed in the Land Court as Document No. 2200658, requiring Petitioner to establish two trail heads and place signage on Petitioner's lands adjacent to the coastal trail.

Compliance: The colony of *Canavalia pubescens* is located within the western makai portion of the undeveloped archeological preserve area and, as such, is not impacted by the Golf Course development. Petitioner's consultant, Char & Associates, completed a new survey verifying plant colony locations, and submitted a mitigation plan to DOFAW. By letter to Petitioner dated July 9, 2002, Vicky Caraway of DOFAW approved this mitigation plan.

As stated in the mitigation plan, "the number of *Canavalia pubescens* plants on the site varies from year to year depending on the amount of rain received, competition from other plants, and amount of seeds produced from previous years." Due to the amount of rain received, the colony of *Canavalia pubescens* located within the archeological preserve area has been declining since 1988. The mitigation plan recommends that "[a]nother population or two should be established on the preserve site." Pūlama Lānaʻi is working with the Plant Extinction Prevention Program (PEPP) to protect the *Canavalia pubescens* in the preserve area, or given the sensitivity of this species to available rainfall, Pūlama Lānaʻi and PEPP are investigating the alternative of supporting a population of this species in other locations on the island that can be fenced.

CONDITION 8

"Petitioner shall only develop, construct, operate, and maintain the proposed golf course and any subsequent residential development in the Manele Project District and take appropriate preventative measures so that it will not cause any deterioration in the Class AA water quality standards currently in existence for Hulopoʻe Bay and the coastal waters adjacent to the Manele Bay Hotel and the golf course, or any comparable standards as may be established by law in the future, taking into account, temporary perturbations from natural occurrences.

"a. The petitioner shall fully mitigate any condition caused by its development activities which results in deterioration of the standards referred to in paragraph 8.

b. The petitioner shall retain an environmental monitor, as may be mutually agreed between it and Lanaʻians for Sensible Growth for the purpose of monitoring the water quality standards referred to in paragraph 8. The monitor shall promptly make its results available to the State Department of Health. The monitoring program shall include baseline studies of such coastal waters and ongoing water quality monitoring on not less than a quarterly basis. The monitoring program will be conducted with a frequency and in a manner so as to be at least as effective, in the opinion of the monitor, as any other coastal water quality monitoring program for similar waters implemented in the State of Hawaii."

Petitioner's compliance with this relevant County of Maui condition is evidenced by the County of Maui's grant of Manele Project Phase III approval, April 1996.

CONDITION 10

"Petitioner shall not utilize the potable water from the high-level groundwater aquifer for Golf Course irrigation use, and shall instead develop and utilize only alternative non-potable sources of water (e.g., brackish water, reclaimed sewage effluent) for Golf Course irrigation requirements.

"In addition, Petitioner shall comply with the requirements imposed upon the Petitioner by the State Commission on Water Resource Management as outlined in the State Commission on Water Resource Management's Resubmittal - Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990."

Compliance: The subparts of this condition are discussed in the following order: (1) development and utilization of alternative non-potable water sources, (2) the State Commission on Water Resource Management's (CWRM) Resubmittal- Petition for Designating the Island of Lanai as a Water Management Area, dated March 29, 1990; and (3) non-utilization of potable water from the high-level groundwater aquifer.

With respect to the development and utilization of alternative non-potable water sources (brackish water and reclaimed sewage effluent), Petitioner has developed a high capacity system for Golf Course irrigation. Petitioner has developed a non-potable water system for irrigation purposes that utilizes brackish well-water and stores this non-potable water in a 15 million gallon open reservoir. Petitioner also utilizes reclaimed water from the Manele Wastewater Treatment Plant for Golf Course irrigation, which provides "R-1" quality water and produces between 60,000 and 120,000 gallons per day (approximate) of reclaimed water (with an expanded capacity of 140,000 gallons per day).

The County of Maui concluded that Petitioner has developed an adequate brackish and non-potable water system for the Golf Course. The County of Maui Planning Commission approved Petitioner's request for Manele Project Phase II Development Approval, Special Management Area Use Permit and Planned Development Step I approval subject to 32 conditions, including the following condition number 24:

"That Phase III approval shall not be granted until a complete report substantiating that non-potable water for the irrigation of the Golf Course is available and sustainable; and that the brackish water system will be constructed and operational at the time of the issuance of the building

measures. Monthly water use reports provide the means for monitoring hydrologic conditions. Condition was mainly to notify the public of 174C-43 & 44 concerning the requirement of public involvement for mitigative actions when 80 percent sustainable yield actual use is occurring. Copies of these reports are provided to CWRM and the County Department of Water Supply.

Require Lanai Company to formulate a water shortage plan that would outline actions to be taken by the Company in the event a water shortage situation occurs. This plan shall be approved by the CWRM and shall be used in regulating water use on Lanai if CWRM should exercise its declaratory powers of a water emergency pursuant to Section 174C-62(g) of the State Water Code. A draft of this plan should be available for public and CWRM review no later than the beginning of October 1990 and shall be approved by the CWRM no later than January 1991. Petitioner's water shortage plan was approved by CWRM on January 17, 1991 in compliance with this condition.

That the Commission shall hold annual public informational meetings on Lanai during the month of October to furnish and receive information regarding the island's water conditions. The public shall be duly notified of such meetings. Public informational meetings have been held every October since 1990. The Lanai Water Advisory Committee (LWAC) was a participant in addition to the CWRM and Petitioner.

Non-utilization of Potable Water from the High-level Groundwater Aquifer:

Petitioner's compliance with Condition 10's requirement that Petitioner "shall not utilize potable water from the high-level groundwater aquifer" was the subject of the Commission's Order to Show Cause, dated October 13, 1993. On May 17, 1996, the Commission issued its Findings of Fact, Conclusions of Law and Decision and Order that found Petitioner to be in violation of Condition 10 and ordered Petitioner to cease and desist of any use of high-level aquifer water for Golf Course irrigation (1996 Order).

Thereafter, Petitioner appealed the 1996 Order to the Second Circuit Court, which reversed the decision of the Commission that the Petitioner's use of any water from the high-level aquifer for Golf Course irrigation violated Condition No. 10. This decision was subsequently appealed by the Commission and the Lanaians for Sensible Growth (LSG) to the Hawaii Supreme Court.

On September 17, 2004, the Hawaii Supreme Court affirmed the Circuit Court's order reversing the Commission's 1996 Order. In doing so, the Supreme Court agreed with the Circuit Court that the Commission's finding that Petitioner had violated Condition 10 was "clearly erroneous", and determined that Condition

On May 25, 2010 First Circuit Court Judge Karl S. Sakamoto denied the motion to dismiss the appeal. At the hearing on LSG's appeal from the Commission's decision modifying Condition 10 and vacating the 1996 Cease and Desist order, the First Circuit Court dismissed LSG's appeal for lack of jurisdiction.

LSG subsequently filed an appeal from the First Circuit Court's dismissal of the appeal of the Commission decision modifying Condition No. 10.

On August 24, 2012, the Intermediate Court of Appeals reversed Judge Sakamoto's May 25, 2010 Order, and remanded the matter back to the Circuit Court ruling that the Circuit Court did have jurisdiction to hear LSG's agency appeal. Without further briefing or argument, the Circuit Court then issued an Order on November 8, 2012 vacating the Commission's January 25, 2010 Order and remanding the matter back to the Commission for further evidentiary hearings.

Petitioner filed a Notice of Appeal of this Order on December 7, 2012. The Circuit Court issued a Final Judgment on March 19, 2013. Petitioner filed a second Notice of Appeal on March 28, 2013.

On April 5, 2013, Petitioner filed a Motion to Consolidate Appellate Court Case Numbers CAAP-12-0001065 and CAAP-13-0000314. On April 29, 2013, the Intermediate Court of Appeals issued an Order Consolidating Appellate Court Case Numbers CAAP-12-0001065 and CAAP-13-0000314 under Appellate Court Case Number CAAP-13-0000314. Petitioner filed its Opening Brief on August 29, 2013. On October 21, 2013, the case was ordered into the Appellate Court Mediation Program. LSG filed its Answering Brief on November 27, 2013. The case remains in mediation at this time.

CONDITION 11

"Petitioner shall fund the design and construction of all necessary water facility improvements, including source development and transmission, to provide adequate quantities of potable and non-potable water to service the subject property."

Compliance: Petitioner has complied with this condition and completed the construction of all necessary water facility improvements (including source development and transmission) as part of the overall development and operation of the Golf Course and the Manele Project District.

With respect to potable water, Petitioner has completed the construction of all necessary water facility improvements. With respect to non-potable water, Petitioner has developed a non-potable water system for irrigation purposes that utilizes brackish well-water and stores this non-potable water in a 15-million gallon open reservoir. Petitioner also utilizes reclaimed water from the Manele Wastewater Treatment Plant, for Golf Course irrigation, which provides "R-1"

that intercepts infiltrated irrigation water and rain water from the greens and conveys such water to seepage pits or an area of the rough, as evidenced by the Engineer's Statement of Completion, dated January 21, 1994, by Kenneth O. Nagai of Belt Collins & Associates. Additionally, Petitioner is planning to install additional drainage infrastructure throughout the Manele Project District, including the Golf Course area, to enhance the capacity of the existing drainage systems as other areas within the Project District are developed. A final master drainage plan showing these additional drainage improvements was prepared by R.M. Towill Corporation and submitted to the County of Maui, Department of Public Works & Environmental Management and Department of Planning on February 27, 2004. This plan was accepted by the County of Maui.

CONDITION 13

"Petitioner shall fund the design and construction of all transportation improvements necessitated by the proposed development identified by and to the satisfaction of the Department of Transportation."

Compliance: This condition was amended (to read as quoted above) on December 29, 1992 by the Commission's "Order Granting Motion for Order Amending Condition 13 of Decision and Order Dated April 16, 1991".

Petitioner has complied with this condition. It has coordinated its compliance with various transportation conditions arising from various State and County land use approvals, including the access road to the hotel and the Golf Course, with the State Department of Transportation.

CONDITION 14

"Petitioner shall undertake periodic monitoring of the traffic conditions within and adjacent to the Property throughout the project's development period as required by the State Department of Transportation."

Compliance: Petitioner's contractor, Pacific Planning and Engineering, Inc., completed an updated and revised traffic study, dated May 1993, in compliance with this condition.

CONDITION 15

"Petitioner shall fund the design and construction of the appropriate wastewater treatment and disposal methods to the satisfaction of the State Department of Health and the County of Maui."

Compliance: Petitioner has complied with this condition. Petitioner funded the design and construction of an appropriate wastewater system for the Golf Course and expanded this system because of the needs of residential development. Petitioner completed this expansion in May 1998. The current wastewater system is

CONDITION 18

"Non-potable water sources shall be used towards all non-consumptive uses during construction of the project."

Compliance: Petitioner has complied with this condition. Petitioner initially used non-potable reclaimed wastewater from the Manele treatment plant for dust control during the construction of the Golf Course. After the water distribution system for the non-potable water wells was completed, Petitioner used the brackish sources from the Palawai Basin during construction of the Golf Course.

CONDITION 19

"The Property shall be included in the Lanai Community Plan as part of the Manele Project District."

Compliance: Petitioner has complied with this condition. The Property is included in the Lanai Community Plan as part of the Manele Project District, as evidenced by Section 19.70 the Maui County Code (Lanai Project District- Manele) and Maui County Ordinance 2133 (1992).

CONDITION 20

"Petitioner shall develop the property in substantial compliance with representations made to the Land Use Commission in obtaining reclassification of the property. Failure to so develop may result in reclassification of the property to its former land use classification."

Compliance: Petitioner has complied with this condition. As noted, Petitioner has completed the Golf Course and the Golf Course clubhouse, being the use for which reclassification was granted.

CONDITION 21

"Petitioner shall provide annual reports to the Land Use Commission, the Office of State Planning, and the County of Maui Planning Department in connection with the status of the project and Petitioner's progress in complying with the conditions imposed."

Compliance: Petitioner has complied with this condition. Petitioner has submitted annual reports for each calendar year since the Commission's approval of the project and this letter constitutes Petitioner's 2014 Annual Report.

CONCLUSION.

Should you have any questions or desire any additional information concerning the foregoing, please contact the undersigned at (808) 237-2205.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Kurt Matsumoto', with a stylized flourish at the end.

Kurt Matsumoto
Chief Operating Officer

cc: State of Hawai'i, Office of Planning

cc: Mr. William Spence County of Maui Planning Department